

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine Higginbotham	Team: Team # 8	CCRB Case #: 200612493	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/15/2006 11:05 PM	Location of Incident: § 87(2)(b)	Precinct: 69	18 Mo. SOL 3/15/2008	EO SOL 3/15/2008	
Date/Time CV Reported Mon, 09/18/2006 11:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/20/2006 3:38 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. SGT Brian Nyhus	00974	922882	NARCBBS
3. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Sukhjiwan Nijjar	31606	929178	NARCBBS
2. DT3 Bobby Fuentes	02703	901570	NARCBBS
3. DT3 Shante Terrell	04424	929243	NARCBBS
4. DT3 Daniel Ticali	05570	929255	NARCBBS
5. POM Michael Reddington	15907	894882	NARCBBS

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers pointed their guns at § 87(2)(b)	§ 87(2)(b)
B. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
C. An officer	Discourtesy: An officer spoke obscenely to § 87(2)(b)	§ 87(2)(b)
D. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
E. An officer	Force: An officer struck § 87(2)(b) with a blunt instrument.	§ 87(2)(b)
F. Officers	Abuse: Officers strip-searched § 87(2)(b) on the roof of § 87(2)(b)	§ 87(2)(b)
G. SGT Brian Nyhus	Abuse: Sgt. Brian Nyhus authorized the strip-search of § 87(2)(b) at the 69th Precinct stationhouse.	§ 87(2)(b)
H. An officer	Abuse: An officer performed a visual cavity search on § 87(2)(b)	§ 87(2)(b)

Synopsis

On September 15, 2007 around 11:00 p.m., § 87(2)(b) sold a quantity of crack cocaine to an unknown female outside of § 87(2)(b) in Brooklyn. § 87(2)(b) entered the building and multiple unknown officers approached him. He ran from the officers and they pursued him with their firearms pointed at him (Allegation A). An officer said, “Stop, asshole,” (Allegation B). The officers caught up with § 87(2)(b) on the roof of § 87(2)(b) grabbed him and threw him against the wall. An officer elbowed him in the neck and he was handcuffed. After he was handcuffed, an officer threw him on the ground, injuring his shoulder (Allegation C). An officer threatened to throw him from the roof of § 87(2)(b) and another officer threatened to “open up his asshole” (Allegation D). An officer hit § 87(2)(b) with either an umbrella or a firearm (Allegation E). Officers removed § 87(2)(b)'s pants on the roof of § 87(2)(b) to search him (Allegation F). § 87(2)(b) was transported to the 69th Precinct stationhouse. There, he was strip- searched under authorization from Sgt. Brian Nyhus of Brooklyn South Narcotics (Allegation G) and during the strip search, an officer looked inside his anus with a flashlight (Allegation H).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

On September 15, 2007, at 11:05 p.m., § 87(2)(b) was arrested and complained to Corrections at Brooklyn Central Booking, “The cops beat me up.” Corrections officers called for an ambulance and § 87(2)(b) was transported to § 87(2)(b) Sgt. Dalton of Brooklyn South Narcotics called IAB to notify them of § 87(2)(b)'s complaint, stating that § 87(2)(b) had no physical injuries and he did not complain of any specific injury (encl. 7a-b). On § 87(2)(b), § 87(2)(b) told medical personnel at § 87(2)(b) that he was hit with a “pistol in his head” (encl. 29a-p).

On September 29, 2006, § 87(2)(b) a 5'11", 175-pound black male, was interviewed at the § 87(2)(b) on Riker's Island, where he was incarcerated (encl.9a-c).

On September 15, 2006 § 87(2)(e), § 87(2)(f)

§ 87(2)(b) then proceeded to the roof of § 87(2)(b) When he reached the roof he began smoking crack using a pipe. § 87(2)(b) also had a black umbrella in his possession. The roof of this building is connected to the roofs of other nearby buildings. After § 87(2)(b) had been on the roof for less than a minute, an unidentified officer, PO2, a 190-pound Italian male officer with brown hair who was wearing blue jeans and a windbreaker, came halfway up the staircase leading to the roof and commanded § 87(2)(b) to come downstairs with him. Later in his CCRB interview, § 87(2)(b) stated that PO2 he ran up to the roof of § 87(2)(b) after PO2 directed § 87(2)(b) to come with him. PO2 did not identify himself as a police officer, however § 87(2)(b) assumed that he was probably an officer based upon his race. Meanwhile, several officers were moving onto the roof § 87(2)(b) was standing on from nearby buildings. Upon seeing PO2, § 87(2)(b) attempted to run away and dispose of the crack and pipe in his possession.

After § 87(2)(b) attempted to flee, between six and eight officers converged on him. Among these officers included PO3, a muscular 6'0" 190 pound Hispanic male officer with long hair who was wearing a yellow baseball cap. PO3 said, "Stop, asshole!" Three officers drew guns on § 87(2)(b) immediately thereafter. Officers tackled § 87(2)(b) to the ground, picked him up by the collar and threw him against the wall. An officer, PO4, a 6'0" 200 pound Caucasian male officer, then hit him in the face with a metal object that § 87(2)(b) believes might have been a firearm or the umbrella he had been carrying. PO3 elbowed § 87(2)(b) on the side of his neck and told him that he should have shot him when he had the chance. Another officer, who later identified himself as "PO Steve Smith," threatened to throw § 87(2)(b) off the roof of the building. During this period while § 87(2)(b) was on the ground, officers removed his pants. § 87(2)(b) heard one officer threaten to "open up his asshole," though § 87(2)(b) did not see which officer made this statement.

§ 87(2)(b) stated during his CCRB interview that officers threw him to the ground after handcuffing him causing injury to his left shoulder.

After § 87(2)(b) was searched, he was placed in a police van. When he complained that his handcuffs were too tight, PO Smith grabbed him by the collar and slammed him against the van demanding that he "stop bitching." While in custody at the precinct, § 87(2)(b) was strip searched. Additionally, he was forced to "open his buttocks." The officer who conducted the search at the precinct then used a flashlight to look inside § 87(2)(b)'s anus. § 87(2)(b) could only describe the officers who conducted the search as a Caucasian male and a Hispanic male. The officers called him a "pussy" due to the fact that he cried during his arrest. § 87(2)(f)

Approximately 24 hours later, § 87(2)(b) was taken to § 87(2)(b). While § 87(2)(b) was at the hospital he told PO4 that he was afraid someone was going to kill him during the time he was arrested because an officer had threatened to throw him off the roof. PO4 admitted that he had made this threat. § 87(2)(b) was treated with an IV for internal bleeding. § 87(2)(b) continues to suffer pain in his left shoulder and swelling in his ankles and ear as a result of this incident.

Results of Investigation

Officer Statements

UC #§ 87(2) OCCB Buy Report, Field Test Reports and Expense Report

On September 15, 2006, UC § 87(2) created a buy report for a buy and bust operation resulting in the arrest of JD "Panama", otherwise known as § 87(2)(b). UC #§ 87(2) wrote that he/she purchased \$40.00 of crack cocaine from § 87(2)(b) in front of § 87(2)(b) at 11:00 p.m. on September 15, 2006. § 87(2)(b) was arrested at 11:05 p.m. inside § 87(2)(b). UC #§ 87(2) described § 87(2)(b) as a black male who was between 5'10" and 6'2", 160-170 pounds, and 35-40 years old, wearing a blue jean jacket, blue jean pants and white sneakers. The undercover officer wrote that he/ she purchased one alleged twist of crack cocaine after approaching § 87(2)(b) and asking him where she might buy crack cocaine. § 87(2)(b) said he knew where to get crack cocaine, and took forty dollars from the undercover, leaving the location and returning. Upon his return, § 87(2)(b) provided UC #§ 87(2) with a clear plastic twist containing a "white, rocky substance." UC #§ 87(2) left the location and notified the field team that he/she had purchased narcotics from § 87(2)(b). Field test results were positive for one twist of crack cocaine, recovered from § 87(2)(b)'s hands. The expense report for the buy and bust indicated that 40 dollars was expended during this operation (encls. 10, 11, 12, 13).

§ 87(2)(g)

PO Sukhjiwan Nijjar: Memobook

On September 15, 2007, PO Nijjar created an entry in his memobook indicating that at 11:05 p.m., an individual named § 87(2)(b) DOB § 87(2)(b), was arrested in front of § 87(2)(b) (encl. 14a-c).

PO Sukhjiwan Nijjar: Arrest Report

On September 15, 2006, at 11:05 a.m., PO Sukhjiwan Nijjar created an arrest report for the arrest of § 87(2)(b) was arrested inside of § 87(2)(b) after committing an offence in front of § 87(2)(b). He was arrested for § 87(2)(b). The narrative on the arrest report indicated that § 87(2)(b) exchanged a controlled substance for US currency with an undercover police officer. Search incident to lawful arrest indicated that § 87(2)(b) was in possession of additional crack cocaine and pills. Upon arrest, § 87(2)(b) flailed his arms, kicked his feet and attempted to escape. The arrest report indicated that no force was used to enact the arrest (encl. 15a-b).

PO Sukhjiwan Nijjar: Criminal Court Complaint

On September 15, 2006, PO Sukhjiwan Nijjar created a criminal court complaint against § 87(2)(b) for the violations criminal possession of a controlled substance in the seventh degree, § 87(2)(b) § 87(2)(a) 160.50. PO Nijjar wrote that § 87(2)(b) did “knowingly and unlawfully possess a controlled substance, knowingly and unlawfully possess a narcotic drug with intent to sell it, and knowingly and unlawfully sell a narcotic drug. PO Nijjar wrote that he had been informed of this by an undercover police officer that purchased crack cocaine from § 87(2)(b) (encl. 16a-b).

PO Sukhjiwan Nijjar: Property Vouchers

On September 15, 2006, PO Nijjar vouchered a twenty dollar bill, thirteen and one half unidentified pills, one clear ziplock bag with crack cocaine, and one glass pipe with cocaine residue pursuant to the arrest of § 87(2)(b) as arrest evidence (encl. 17a-c).

PO Sukhjiwan Nijjar: CCRB Statement

On March 6, 2007, the CCRB interviewed PO Sukhjiwan Nijjar of Brooklyn South Narcotics (encl. 18a-b). PO Nijjar is a § 87(2)(b)-old Asian male with black hair and brown eyes. He is 5’9” and weighs 180 pounds. PO Nijjar was interviewed by the CCRB because he was identified by § 87(2)(b)s arrest paperwork as his arresting officer on September 15, 2006.

On September 15, 2006, PO Nijjar was working as part of the 63/69th PCT Narcotics module. He was assigned to the team’s lead vehicle, a silver GMC Envoy sports utility vehicle, with Sgt. Brian Nyhus. § 87(2)(e)

§ 87(2)(b) A second undercover officer, known as the “ghost,” whose responsibility it was to observe the undercover officer engaging in the sale, provided a description of the subject whom the first undercover had purchased narcotics from. PO Nijjar could not remember any elements of this description other than that the subject was a black male and the ghost described the clothing being worn at that time by the subject. The ghost also told PO Nijjar and Sgt. Nyhus that the subject was in front of § 87(2)(b) PO Nijjar and Sgt. Nyhus informed the field team, which consisted of PO Louis Read, Det. Bobby Fuentes, PO Michael Reddington and prisoner van officers Det. Shante Terrell and Det. Daniel Ticali that a positive buy had been made at this location.

PO Nijjar and Sgt. Nyhus left the corner of 105th Street and Farragut Road went to § 87(2)(b) which was a block and a half away. When they began looking around they initially did not see anyone. However, when PO Nijjar looked up to the second floor, he saw an individual fitting the description of the subject, later identified as § 87(2)(b) When § 87(2)(b) saw PO Nijjar he began running towards the roof. PO Nijjar and Sgt. Nyhus informed the rest of the field team by radio that the subject had started running towards the roof. They entered the building and began going upstairs. PO Nijjar had his gun drawn for his safety because he did not know whether § 87(2)(b) was armed. None of the officers said, “Stop, asshole,” as they chased after § 87(2)(b) PO Read, PO Reddington and Det. Fuentes followed them. As they approached the fourth floor, they heard a door slam on the roof so they followed § 87(2)(b) to the roof. When they reached the roof, they displayed their shields in order to

identify themselves as police officers and told § 87(2)(b) that they wanted to speak with him. PO Nijjar grabbed § 87(2)(b)'s left arm. § 87(2)(b) leaned forward at PO Nijjar with his mouth open and attempted to bite his left hand. Sgt. Nyhus also began assisting PO Nijjar in placing § 87(2)(b)'s arms behind his back so that he could be handcuffed. Det. Fuentes was attempting to hold the door to the roof open with his hand. When the struggling § 87(2)(b) collided with the door, one of Det. Fuentes' hands was jammed in the door. Eventually, officers managed to place § 87(2)(b)'s arms behind his back and handcuff him. § 87(2)(b) continued moving his body. Feeling that he was moving too much for an effective search of him to be conducted, PO Nijjar and other officers grabbed his legs and brought him to the ground. § 87(2)(b) continued trying to move his legs once he was on the ground. PO Nijjar began searching through § 87(2)(b)'s pockets. He found crack/cocaine and the money that was used by the undercover officer to purchase narcotics from § 87(2)(b). PO Nijjar placed these items in an envelope to be vouchered as evidence and then began walking § 87(2)(b) downstairs. PO Nijjar did not strip search § 87(2)(b) or remove any articles of clothing from his body while they were on the roof. He did not observe any officer strike § 87(2)(b) with the butt of his gun or any other blunt object, threatening to throw § 87(2)(b) off of the roof of the building, or tell § 87(2)(b) that they were going to "open up his asshole." He was not working with any officer known as Steve Smith during this incident and he does not even know such an officer.

PO Nijjar and his fellow officers brought § 87(2)(b) downstairs without incident or significant further resistance from § 87(2)(b) though he continued to state that PO Nijjar had the wrong guy. § 87(2)(b) did not complain about any injuries he had suffered as a result of the confrontation. PO Nijjar did not see any visible injuries on § 87(2)(b)'s person. When § 87(2)(b) left the building, the undercover officer identified him as the person involved in the narcotics transaction. § 87(2)(b) was then placed inside the prisoner van and taken to the 69th Precinct stationhouse. Sgt. Nyhus and PO Nijjar went to the stationhouse as well. While they were at the stationhouse § 87(2)(b) was strip searched. However, PO Nijjar did not participate in or observe the strip search of § 87(2)(b). He did not see any officer call § 87(2)(b) "a pussy" while he was at the stationhouse.

Sgt. Brian Nyhus: Tactical Plan

On September 15, 2006, Sgt. Nyhus created a tactical plan for his field team consisting of PO Nijjar, Det. Fuentes, PO Read, PO Reddington, Det. Ticali, Det. Terrell, and two undercover police officers. The tactical plan noted that it was raining. Sgt. Nyhus and PO Nijjar were in the lead car, a silver GMC. Det. Fuentes, PO Read and PO Reddington were in a gray Mitsubishi. Det. Ticali and Det. Terrell were in the prisoner van, a silver Ford Freestar. The location of § 87(2)(b)'s arrest was not listed in the tactical plan (encl. 20).

Sgt. Brian Nyhus: CCRB Statement

On February 13, 2007, Sgt. Brian Nyhus of Narcotics Borough Brooklyn South, was interviewed at the CCRB (encl. 21a-c). Sgt. Nyhus is a § 87(2)(b)-old white male with brown hair and blue eyes. He is 6'3" and weighs 250 pounds. Sgt. Nyhus had no entries in his memobook regarding the incident. The CCRB interviewed Sgt. Nyhus because he was identified in the tactical plan as the supervisor of the buy and bust operation that led to § 87(2)(b)'s arrest.

On September 15, 2006, Sgt. Nyhus served as the supervisor for the 63/69 Narcotics Module from 4:00 p.m. to 3:00 a.m.. Sgt. Nyhus was wearing shorts, a T-shirt, sneakers and a button-down shirt on September 15, 2006.

At approximately 11:05 p.m., Sgt. Nyhus and his team were conducting a narcotics enforcement operation with the other members of his narcotics team in the Brookline Housing Projects in Brooklyn. During this period, an undercover officer approached § 87(2)(b) and another individual whose identity Sgt. Nyhus could not recall, and began a conversation with them about purchasing narcotics in front of § 87(2)(b) a public housing building. The sergeant observed this conversation from his vehicle. After the conversation began, the undercover officer, § 87(2)(b) and the other individual entered § 87(2)(b). When the undercover officer left the building, the officer stated over point-to-point police radio that narcotics had been purchased. The undercover officer provided a description of the two individuals the officer had purchased narcotics from. Sgt. Nyhus transmitted this description to the other members of the team. Sgt. Nyhus did not remember any of the elements of the undercover officer's

description of § 87(2)(b). After referring to the property vouchers, Sgt. Nyhus testified that the undercover purchased a “clear plastic twist of Crack/Cocaine.”

When Sgt. Nyhus and other module members entered § 87(2)(b) and the other individual who participated in the narcotics transaction ran up the stairs of the building towards the roof in an effort to escape. The sergeant stated that he was one of the last members of his team to enter the building. In order to find the two suspects officers conducted a vertical patrol of the building. By the time Sgt. Nyhus came to the roof, he observed § 87(2)(b) under arrest and in handcuffs. Less than ten minutes elapsed between the time when Sgt. Nyhus observed § 87(2)(b) enter the building and the time when Sgt. Nyhus observed § 87(2)(b) in handcuffs. He was fully clothed when Sgt. Nyhus arrived and did not mention that he had been strip searched on the roof or that anyone had ordered him to “open up his asshole.” The sergeant did not remember seeing § 87(2)(b)’s face at this time and did not remember observing any injuries on § 87(2)(b)’s face. He did not recall whether or not § 87(2)(b) appeared to be under the influence of narcotics. Officers were not pointing their weapons towards § 87(2)(b) when Sgt. Nyhus arrived. Though § 87(2)(b) was yelling and screaming at the officers, he did not request medical attention or complain of any injuries. He did not complain that officers had threatened to throw him off the roof or that an officer had used the butt of his gun to strike him in his face or head. Throughout the time Sgt. Nyhus observed § 87(2)(b) on the roof, § 87(2)(b) did not provide any physical resistance. Sgt. Nyhus did not know whether narcotics were recovered from § 87(2)(b) while he was on the roof. The sergeant does not know whether the second suspect was arrested on the roof, though he believed that the second suspect was arrested.

§ 87(2)(b) was brought down the stairs towards the prisoner van. Before, § 87(2)(b) was placed in the van, the undercover officer who had purchased narcotics from § 87(2)(b) returned to the scene and identified § 87(2)(b) as the person who had participated in the narcotics sale. After this identification had taken place, § 87(2)(b) was placed into the prisoner van. Though Sgt. Nyhus did not know which officers were assigned to the prisoner van, he stated that if prisoners were already in the van, one of the officers assigned to the prisoner van would have remained behind to guard the prisoners. The sergeant did not accompany § 87(2)(b) in the prisoner van to the 69th Precinct stationhouse. Instead, he followed § 87(2)(b) and the other prisoners to that location in his vehicle.

When he arrived at the stationhouse, § 87(2)(b)’s arrest was entered into the command log. The officers in the prisoner van informed Sgt. Nyhus that § 87(2)(b) had been fidgeting in his seat in a manner that suggested to them that he was attempting to dispose of narcotics secreted on his person. The prisoner van officers did not mention that they had told § 87(2)(b) to “stop bitching” or that they needed to push § 87(2)(b) against the van or otherwise use physical force against him in the van. Sgt. Nyhus therefore decided to authorize a strip search of § 87(2)(b) because § 87(2)(b) had been arrested for selling Crack/Cocaine, because this substance can be easily secreted on one’s person and because of § 87(2)(b) behaved in the prisoner van in a manner suggesting that he was attempting to discard contraband. The sergeant cannot remember having suspicion that narcotics had been secreted in any particular location on § 87(2)(b)’s person. Before the strip search of § 87(2)(b) was conducted, Sgt. Nyhus informed the desk officer that this strip search would be conducted and the desk officer entered the strip search into the 69th Precinct command log.

Sgt. Nyhus did not observe the strip search of § 87(2)(b). § 87(2)(b) was strip searched in one of the 69th Precinct stationhouse holding cells. No other prisoner was in the cell § 87(2)(b) had been placed in. The officers assigned to the prisoner van conducted the strip search. Sgt. Nyhus stated that had he received any reports that § 87(2)(b) was resisting the strip search, he would have ordered officers to transport him to the hospital as an emotionally disturbed person. The sergeant stated that the search was conducted in a well lit area so there would have been no reason for the officers to use a flash light during the strip search and that officers would not have been allowed to take a flashlight into the cell with them because it could potentially be used as a weapon. Sgt. Nyhus stated that he did not tell the officers in the prisoner van to use a flashlight in order to search for contraband in § 87(2)(b)’s anus. Sgt. Nyhus had no independent recollection regarding whether or not narcotics were recovered from § 87(2)(b) as part of the strip search. Even after he was asked to refer to the property vouchers that had been created as part of § 87(2)(b)’s arrest, he did not know whether a white IBU pill, a clear ziplock bag of Crack/Cocaine or a glass pipe with Cocaine residue was recovered as part of the strip search. Sgt. Nyhus did not know during what portion of the operation any of these items had been recovered. While § 87(2)(b) was in the stationhouse, Sgt. Nyhus denied that himself or any other officer called him a “pussy.” § 87(2)(b) did not request medical treatment at the stationhouse.

Sgt. Nyhus never worked with an officer named PO Steve Smith.

Det. Daniel Ticali and Det. Shante Terrell: CCRB Statement

Det. Daniel Ticali of Brooklyn South Narcotics was interviewed at the CCRB on February 16, 2007. Det. Ticali is a § 87(2)(b)-old American Indian male with brown hair and brown eyes. He is 6'2" and weighs 225 pounds. On March 6, 2007, Det. Shante Terrell of Brooklyn South Narcotics was interviewed at the CCRB. Det. Terrell is a § 87(2)(b)-old black male with brown hair and brown eyes. He is 5'11" and weighs 215 pounds. § 87(2)(g)

Neither Det. Terrell nor Det. Ticali had any entries in their memobooks regarding the incident (encls. 22, 23a-b, 24a-c and 25a-c).

On September 15, 2006, Det. Ticali and Det. Terrell were working as part of 63/69 PCT Narcotics module. Det. Terrell and Det. Daniel Ticali were assigned to the prisoner van using a silver Ford Freestar minivan. At approximately 11:05 p.m., their field team was conducting operations in the vicinity of § 87(2)(b) in Brooklyn, NY. By this time, Det. Ticali and Det. Terrell already had prisoners in their van from previous operations though Det. Terrell could not recall how many prisoners were in the van at this time. The prisoner van remained away from the scene of the operation. Several minutes after the operation began, Det. Terrell received a radio transmission directing them to come to § 87(2)(b) because § 87(2)(b) had fled to the roof of the building. They arrived at the location about one minute later. Det. Ticali exited the prisoner van and entered § 87(2)(b) and Det. Terrell remained in the prisoner van to guard the prisoners. Det. Terrell told the CCRB § 87(2)(b) who had been arrested and handcuffed and was standing in front of this location when they arrived. However, Det. Ticali stated that he went to the roof of § 87(2)(b).

When Det. Ticali made his way to the roof, PO Nijjar, Det. Fuentes and PO Read were already on the roof. When Det. Ticali arrived on the roof, § 87(2)(b) was already in handcuffs. One of the officers present was search § 87(2)(b) frisking his midsection and reaching into all of his pockets. While Det. Ticali has no independent recollection as to who was conducting this search. As a result of the search of § 87(2)(b) a glass pipe with crack residue and one or two "twists" of Crack/Cocaine were recovered. These items were recovered from one of § 87(2)(b)'s pockets though Det. Ticali cannot recall which specific pocket it was. The officer who conducted the search of § 87(2)(b) did not remove any of his clothing and did not conduct a strip search. Throughout the time Det. Ticali was on the roof, § 87(2)(b) was screaming, cursing and spitting at officers. He complained that the officers had nothing better to do than to arrest him after he had just gotten out of jail. He told Det. Ticali that "this is bullshit, I just got out of jail." Det. Ticali said that since he was found in possession of Crack/Cocaine he was going to go to jail. § 87(2)(b) said that he was going to file a complaint. Det. Ticali asked what he was going to complain about and § 87(2)(b) said "whatever I need to, you guys should not be harassing me." § 87(2)(b) did not mention an officer threatening to throw up off the roof, hitting him with the butt of a gun or telling him to "stop asshole" as he was running away. Det. Ticali did not see any injuries on § 87(2)(b)'s head or face. § 87(2)(b) did not complain of any injuries or demand medical attention. The only knowledge of the initial encounter between § 87(2)(b) and officers that Det. Ticali has is that Det. Fuentes informed him that § 87(2)(b) attempted to bite him. § 87(2)(b) did not physically resist after he was handcuffed.

Det. Terrell got out of the van and conducted a brief search of § 87(2)(b) going through all of his pockets in order to make sure he was not in possession of additional contraband. As part of this search, Det. Terrell removed § 87(2)(b)'s wallet and driver's license and placed them in an envelope to be vouchered for § 87(2)(b). Det. Terrell then asked § 87(2)(b) to sit down in the back of the prisoner van, which he did. The prisoner van then left the location. § 87(2)(b) did not manifest any physical injuries when he saw him in handcuffs at this location.

After § 87(2)(b) was arrested, the team conducted additional narcotics operations in other locations. At approximately 12:00 a.m., the prisoner van arrived at the 69th Precinct stationhouse. The other team members arrived at this location at approximately the same time. While § 87(2)(b) was in the prisoner van, neither Det. Terrell nor Det. Ticali told § 87(2)(b) to "stop bitching" or grabbed him by the collar and slammed him against the van. § 87(2)(b) did not complain about any injuries he had suffered during the incident.

After entering the stationhouse, the prisoners were brought in front of the desk and their pedigree information was recorded. Prisoners were then taken to holding cells in the back. As the officers assigned to the prisoner van, Det. Terrell and Det. Ticali were responsible for conducting any strip searches of the prisoners authorized by Sgt. Nyhus. Det. Terrell and Det. Ticali took each prisoner one at a time into a holding cell and directing them to remove each article of clothing individually. When the detectives took § 87(2)(b) to the holding cell where the strip searches were being conducted and stood outside. Sgt. Nyhus remained near this holding cell to supervise the strip searches. They asked § 87(2)(b) to remove his shoes, his socks, his pants, his underwear and his shirts. Once officers had inspected all of these articles of clothing to see if § 87(2)(b) had any weapons or contraband secreted in his clothing, Det. Ticali and Det. Terrell ordered § 87(2)(b) to squat and then cough. After § 87(2)(b) complied with these orders, the detectives returned his clothing and permitted him to get dressed. He was then taken to another holding cell. Det. Terrell denies that he took a flashlight with him while he was searching § 87(2)(b). He also denies using a flashlight to look inside § 87(2)(b)'s anus for drugs. Det. Terrell claims that he had not received any information prior to searching § 87(2)(b) that would have made him more suspicious than normal that § 87(2)(b) was secreting drugs in his anus. Det. Terrell does not know whether any narcotics were recovered as a result of this strip search. The only narcotics Det. Terrell is certain was recovered was narcotics purchased by an undercover officer from § 87(2)(b). Det. Ticali was unable to recall whether or not § 87(2)(b) was strip searched, but stated that he would not have taken a flashlight with him when conducting a strip search because such items could be used as weapons.

PO Michael Reddington and Det. Bobby Fuentes: CCRB Statements

On May 4, 2007, Det. Bobby Fuentes and PO Michael Reddington were interviewed at the CCRB (encls. 26a-b, 27a-b). PO Reddington is a § 87(2)(b)-old white male with black hair and blue eyes. He is 6'2" and weighs 200 pounds. Det. Fuentes is a § 87(2)(b)-old male Hispanic with black hair and brown eyes. He is 5'8" and weighs 170 pounds. Both PO Reddington and Det. Fuentes were assigned to Narcotics Borough Bronx at the time of their CCRB interviews, but were assigned to Narcotics Borough Brooklyn South on September 15, 2006.

§ 87(2)(g)

Neither officer had any entry in his memobook regarding the incident. After reviewing the tactical plan and other paperwork for September 15, 2006 and being given a brief synopsis of the incident, neither PO Reddington nor Det. Fuentes was able to recall § 87(2)(b)'s arrest on that day.

Injuries or Medical Treatment

Pre-Arrest Screening Form

On September 16, 2006, a pre-arrest screening form was created at Brooklyn Central Booking for § 87(2)(b) before he was lodged in Central Booking. § 87(2)(b) told medical personnel that he was not sick and that he was not injured at that time. A visual assessment of § 87(2)(b) by medical personnel proved unremarkable (encl. 28a-d).

§ 87(2)(b)

On § 87(2)(b), § 87(2)(b) was transported to § 87(2)(b) in the custody of NYPD. PO Anthony Hughes, Shield #3500 escorted him, from the 69th Precinct. At § 87(2)(b), § 87(2)(b) told medical personnel that he was hit in the head with a pistol. He complained of sharp pain to the head and neck. During triage, he did not complain of a loss of consciousness and was negative for cuts or bruising to his head. The following medical assessment also indicated that § 87(2)(b) had no signs of trauma. He was diagnosed with a soft tissue injury to the head/neck. § 87(2)(b) did not complain of any other injuries and was not treated for any injuries (encl. 29a-p).

Police Documents

Arrest Photo

§ 87(2)(b)'s arrest photo is unremarkable, indicating that at the time he was lodged at Brooklyn Central Booking, he had no visible swelling, contusions, or lacerations on his head or face (encl. 30a-b).

Command Log

At 12:20 a.m. on September 16, 2006, § 87(2)(b) was brought to the 69th precinct stationhouse under arrest for § 87(2)(b). According to the command log entry, a strip search of § 87(2)(b) was supervised by Sgt. Nyhus. § 87(2)(b) was transported to the 67th Precinct at 2:50 a.m. (encl. 31).

Prisoner Holding Pen Roster

On September 16, 2006 at 12:20 p.m., § 87(2)(b) was lodged in the 69th Precinct holding cells. He was removed from the holding cells to go to Central Booking at 2:20 a.m. (encl. 32a-c).

Criminal History of the Civilian

§ 87(2)(b)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]

Substantiated CCRB Allegations which resulted in the Imposition of Discipline

Sgt. Brian Nyhus has not had any CCRB allegations substantiated against him in his eight years of tenure (encl. 35a-k).

Status of the Criminal Case

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Conclusions and Recommendations

Officer Identification

§ 87(2)(g)
[REDACTED]
[REDACTED]
§ 87(2)(g)
[REDACTED] He named an officer "Steve Smith" as a subject in his allegations, but there is no officer by that name currently assigned to Brooklyn South Narcotics or any other command relevant to § 87(2)(b)'s arrest. § 87(2)(g)
[REDACTED] § 87(2)(b) described the two officers who strip-searched him and performed a visual cavity search of his anus as a white male officer and a Hispanic male officer. However, the CCRB determined that Det. Terrell and Det. Ticali, a black male and an American Indian male, performed § 87(2)(b)'s strip search. § 87(2)(b) stated that one of the officers who placed

him under arrest escorted him to § 87(2)(b). However, § 87(2)(b)'s medical records indicated that an officer from the 69th Precinct escorted § 87(2)(b) to the hospital. On January 31, 2007, the CCRB called § 87(2)(b) to question him further about his arrest on September 15, 2006, and he informed the CCRB that he would not answer any questions regarding the incident. § 87(2)(g)

Undisputed Facts

It is undisputed that on September 15, 2006, § 87(2)(b) sold a quantity of crack cocaine to an undercover police officer and was subsequently arrested. It is undisputed that officers used physical force against § 87(2)(b) while attempting to place him in handcuffs. It is undisputed that Sgt. Brian Nyhus authorized the strip search of § 87(2)(b) at the 69th Precinct stationhouse.

Disputed Facts

§ 87(2)(g)

Assessment of the Evidence

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

He told medical personnel that an officer used a firearm to hit him in the head, and told the CCRB that it was a firearm or an umbrella that hit him.

§ 87(2)(b) made no complaints of pain, injuries or police misconduct to medical personnel at Central Booking, and his arrest photo demonstrated that he had no visible injuries. However, he complained to medical personnel at § 87(2)(b) that he was hit in the head with a pistol, and also that his neck hurt. Medical personnel at § 87(2)(b) noted no injuries on § 87(2)(b) upon examination. He received no medication, X-rays, or other treatment § 87(2)(g)

He stated that he was treated for internal bleeding.

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

[REDACTED]

Allegations and Analysis

Allegation A: Officers pointed their guns at § 87(2)(b)

§ 87(2)(b) stated that as he was fleeing NYPD officers, they pointed their firearms at him before putting him on the ground and handcuffing him. At this point, § 87(2)(b) was known to have been involved in a narcotics transaction and was under arrest. § 87(2)(g)

[REDACTED]

PD v Steven Gliner noted that “there are no regulations or guidelines concerning the drawing of a weapon. The policy of the Department is that an officer can draw his firearm and point it at another person as long as he has reasonable fear for his own or another’s personal safety... to discourage or terminate the attempted use of deadly force against themselves by providing them with a less drastic alternative to the actual use of a firearm” (encl. 1a-f). § 87(2)(g)

Allegation C: Officers used physical force against § 87(2)(b)

It is undisputed that officers fought with § 87(2)(b) to get him in handcuffs. § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED] According to the NYPD Scale of Escalating Force, minor physical resistance should be met with wrestling holds and grips “designed to physically overpower and to inflict physical pain that ends when the technique is stopped and that causes no lasting injury” (encl. 2). § 87(2)(g)

Allegation B: An officer spoke obscenely to § 87(2)(b)

Allegation D: An officer threatened § 87(2)(b) with the use of force.

Allegation E: An officer struck § 87(2)(b) with a blunt instrument.

Allegation F: Officers strip searched § 87(2)(b) on the roof of § 87(2)(b)

Allegation H: An officer performed a visual cavity search on § 87(2)(b)

§ 87(2)(g)

Allegation G: Sgt. Brian Nyhus authorized the strip search of § 87(2)(b) at the 69th Precinct stationhouse.

Sgt. Nyhus acknowledged that he authorized the strip search of § 87(2)(b) because § 87(2)(b) had been arrested for selling crack cocaine, which can easily be secreted anywhere on a person's body. The strip search was documented in the 69th Precinct command log, as is procedure. § 87(2)(g)

§ 87(2)(b) *Kamin's New York Search and Seizure* notes that courts have held that "a person may be strip searched based solely on the fact that he or she has been lawfully arrested for a felony drug offense" (encl.4a-b). § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: